

Senate Study Bill 3151 - Introduced

SENATE FILE _____
BY (PROPOSED COMMITTEE ON
WAYS AND MEANS BILL BY
CHAIRPERSON FEENSTRA)

A BILL FOR

1 An Act creating the tax return preparer oversight Act to
2 establish a tax return preparer oversight board to regulate
3 tax return preparers, modifying the powers and duties of the
4 director of revenue, and providing penalties.
5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 421.17, Code 2018, is amended by adding
2 the following new subsection:

3 NEW SUBSECTION. 35. To make state individual income tax
4 returns and related tax information available to the tax return
5 preparer oversight board for purposes of the administration and
6 enforcement of chapter 421D. The department of revenue and the
7 tax return preparer oversight board may exchange information in
8 a manual and automated fashion. The department of revenue, in
9 cooperation with the tax return preparer oversight board, may
10 adopt rules, if necessary, to implement this subsection. The
11 sharing of information by the department of revenue with the
12 tax return preparer oversight board pursuant to this subsection
13 shall not be deemed a violation of the confidentiality
14 provisions of sections 422.20 and 422.72.

15 Sec. 2. NEW SECTION. 421D.1 **Short title.**

16 This chapter shall be known and may be cited as the "*Tax*
17 *Return Preparer Oversight Act*".

18 Sec. 3. NEW SECTION. 421D.2 **Definitions.**

19 For purposes of this chapter and unless otherwise required
20 by the context:

21 1. "*Board*" means the tax return preparer oversight board.

22 2. "*Client*" means a person for whom a tax return preparer
23 performs or agrees to perform tax return preparation.

24 3. "*Enrolled agent*" means an agent enrolled to practice
25 before the federal internal revenue service pursuant to 31
26 C.F.R. §10.4.

27 4. "*Tax return*" means any return, declaration, refund,
28 claim, or other document required to be made or filed in
29 connection with local, state, or federal income taxes.

30 5. *a.* "*Tax return preparer*" means any of the following:

31 (1) An individual who, for a fee or other consideration,
32 prepares or assists with the preparation of five or more tax
33 returns for clients during a calendar year or who assumes
34 final responsibility for completed work on such tax returns on
35 which preliminary work has been done by another individual,

1 or an individual who holds himself or herself out as offering
2 services described in this subparagraph.

3 (2) A corporation, partnership, association, or other
4 entity that associates with or employs individuals described in
5 subparagraph (1) of this paragraph "a", unless such association
6 or employment is unrelated to the individual's tax return
7 preparation services.

8 *b. "Tax return preparer"* does not include any of the
9 following:

10 (1) An individual licensed as a certified public accountant
11 under chapter 542 or a similar law of another state, including
12 an employee of that individual while functioning within the
13 employee's scope of employment if the employee does not sign
14 tax returns.

15 (2) An individual admitted to practice law in this state or
16 another state, including an employee of that individual while
17 functioning within the employee's scope of employment if the
18 employee does not sign tax returns.

19 (3) A fiduciary of an estate, trust, or individual, while
20 functioning within the fiduciary's legal duty and authority
21 with respect to that individual, or that estate or trust or its
22 testator, trustor, grantor, or beneficiaries, and including
23 an employee of that fiduciary while functioning within the
24 employee's scope of employment if the employee does not sign
25 tax returns.

26 (4) An individual who prepares the tax returns of
27 the individual's employer, while functioning within the
28 individual's scope of employment with the employer.

29 (5) An individual employed by a local, state, or federal
30 government agency, while functioning within the individual's
31 scope of employment with the government agency.

32 (6) An employee of a person described in paragraph "a",
33 subparagraphs (1) and (2), if the employee provides only
34 clerical or other comparable services.

35 Sec. 4. NEW SECTION. 421D.3 Board creation and composition.

1 1. A tax return preparer oversight board is created
2 consisting of five members appointed by the governor and
3 subject to confirmation by the senate. Four members of the
4 board shall be individuals who have been tax return preparers
5 for not less than five years prior to appointment. One member
6 shall be a public member who is not a tax return preparer.

7 2. *a.* For the initial appointments, the terms of office
8 shall be as follows:

9 (1) One member shall serve a term of one year.

10 (2) One member shall serve a term of two years.

11 (3) One member shall serve a term of three years.

12 (4) One member shall serve a term of four years.

13 (5) The public member shall serve a term coterminous with
14 the governor.

15 *b.* For all succeeding appointments, each member other than
16 the public member shall be appointed to serve a term of four
17 years and each public member shall serve a term coterminous
18 with the governor.

19 *c.* A member shall not serve more than two terms or eight
20 years, whichever is less, on the board.

21 3. Each member shall serve until such time as the successor
22 member has been appointed.

23 4. A vacancy on the board shall be filled by the governor in
24 the manner provided for regular appointments and shall be for
25 the remainder of the unexpired term.

26 5. Members shall qualify by taking the regular oath of
27 office as prescribed by law for state officers.

28 6. Members shall serve without compensation but shall be
29 allowed their necessary travel and expenses incurred in the
30 performance of official duties.

31 7. Members serve at the pleasure of the governor.

32 8. The board shall establish rules of procedure which shall
33 include but not be limited to the following guidelines:

34 *a.* The annual election of a chair and such other officers as
35 deemed necessary.

1 *b.* A quorum of at least three members shall be required to
2 conduct business.

3 *c.* The board shall meet at least four times annually.

4 *d.* The board shall comply with chapter 17A, chapter 21, and
5 such other relevant statutory provisions applicable to boards,
6 commissions, and committees.

7 9. Information made available to the board by the department
8 of revenue pursuant to section 421.17, subsection 35, shall be
9 subject to the confidentiality provisions in sections 422.20
10 and 422.72 to the same extent as such information is subject
11 to those confidentiality provisions while in the possession of
12 the director of revenue.

13 10. Members of the board shall not be held personally liable
14 for actions taken under this chapter while acting in good faith
15 and in a reasonable manner.

16 Sec. 5. NEW SECTION. **421D.4 Board powers and duties.**

17 The board shall have the following powers and duties:

18 1. To determine qualifications for registration as a tax
19 return preparer, to develop and administer the examination
20 for registration as a tax return preparer, and to issue
21 registrations to qualified applicants. In developing the
22 examination for registration as a tax return preparer, the
23 board may utilize, in whole or in part, any examination
24 approved by the federal internal revenue service, or any state
25 board or authority responsible for the licensing or regulation
26 of accountants, tax practitioners, or attorneys.

27 2. To develop and administer forms for use in implementing
28 the provisions of this chapter, including but not limited to
29 forms for initial registration and renewal registration of tax
30 return preparers.

31 3. To issue reports and to make recommendations to the
32 governor and general assembly on matters pertaining to the
33 regulation of tax return preparers.

34 4. To adopt rules for implementation of this chapter, to
35 provide for the protection of clients, and to assist tax return

1 preparers in interpreting this chapter. Such rules shall
2 include but not be limited to the following:

3 *a.* Developing and administering examinations required for
4 registration as a tax return preparer.

5 *b.* The renewal of a tax return preparer registration,
6 the selecting of inactive status of a registration and the
7 reactivation of that registration, and the reinstatement of a
8 tax return preparer who fails to renew a registration for any
9 reason if the tax return preparer is otherwise entitled to be
10 registered.

11 *c.* Adoption of rules of professional conduct for tax return
12 preparers.

13 *d.* After consultation with the department of administrative
14 services, the adoption of reasonable fees for all of the
15 following that are sufficient to offset the expenses incurred
16 in the administration of the activity for which the fee is
17 established:

18 (1) Application for examination for a tax return preparer
19 registration.

20 (2) Issuance or renewal of a tax return preparer
21 registration.

22 (3) Issuance or renewal of an inactive tax return preparer
23 registration.

24 (4) Reactivation of an inactive tax return preparer
25 registration.

26 (5) Restoration of a lapsed tax return preparer
27 registration.

28 (6) Issuance of a duplicate or replacement of a lost tax
29 return preparer registration.

30 5. To establish a fund within the state treasury under
31 the control of the board. Moneys deposited in or accruing
32 to such fund are appropriated to the board for purposes of
33 administering this chapter. Notwithstanding section 12C.7,
34 subsection 2, interest or earnings on moneys in the fund shall
35 be credited to the fund. Notwithstanding section 8.33, moneys

1 credited to the fund that remain unexpended or unobligated at
2 the end of a fiscal year shall not revert to any other fund.
3 All fees, penalties, and fines imposed and collected by the
4 board shall be deposited in the fund.

5 6. To employ and discharge personnel as necessary,
6 prescribe their duties and powers, and fix their compensation.

7 7. To administer oaths, hold hearings, and take testimony
8 about matters within the jurisdiction of the board.

9 8. To issue subpoenas for the attendance of witnesses to
10 testify or the production of evidence in connection with a
11 disciplinary action brought under this chapter or a proceeding
12 brought for an alleged violation of this chapter, and to
13 petition courts of competent jurisdiction to compel compliance
14 with subpoenas.

15 9. a. Except as provided in paragraph "b", to investigate
16 all complaints that allege a violation of this chapter. If the
17 complaint involves an enrolled agent, a copy of the complaint
18 and the findings of the board shall be forwarded to the federal
19 internal revenue service office of professional responsibility,
20 unless the complaint is determined to be without merit.

21 b. (1) If the complaint involves an individual or firm
22 governed by the Iowa accountancy examining board under chapter
23 542, or a similar board in another jurisdiction, the complaint
24 shall be immediately forwarded to that board.

25 (2) If the complaint involves an attorney admitted to
26 practice law in this state or in another jurisdiction, the
27 complaint shall be immediately forwarded to the Iowa supreme
28 court or to the equivalent attorney governing body of the other
29 jurisdiction, as applicable.

30 10. The board may by rule establish and impose penalties
31 upon tax return preparers for violations of section 421D.8,
32 subsection 3, paragraphs "i", "j", "k", "l", "m", and "n".
33 Such penalties shall be in addition to any other penalties
34 imposed by the board, the department of revenue, or the federal
35 internal revenue service.

1 11. The lapse, suspension, or revocation of a tax return
2 preparer registration under this chapter by operation of law or
3 by order of the board or a court, or the voluntary surrender of
4 such a registration by a tax return preparer, shall not deprive
5 the board of jurisdiction or authority to proceed with any
6 investigation or other action against the tax return preparer,
7 nor shall it revise or render void any previous action by the
8 board against the tax return preparer.

9 Sec. 6. NEW SECTION. 421D.5 Administrative remedies —
10 civil penalties.

11 1. The board on the affirmative vote of a majority of the
12 members may deny registration to any applicant registering as
13 a tax return preparer, reprimand any tax return preparer, or
14 suspend or revoke the registration of any tax return preparer
15 if the tax return preparer does any of the following:

16 a. Fails to meet the qualifications for registration as a
17 tax return preparer under section 421D.7.

18 b. Violates any provision of this chapter or the rules
19 adopted by the board, or knowingly aids or abets another person
20 in violating any provision of this chapter or the rules adopted
21 by the board.

22 c. Is convicted of a misdemeanor or felony directly related
23 to the tax return preparer's fitness and qualification to
24 provide tax return preparation services.

25 d. Is guilty of negligence, incompetence, or misconduct
26 while providing services as a tax return preparer.

27 2. Except as otherwise provided in this chapter, before
28 the board takes any final action to deny, suspend, or revoke a
29 registration or to reprimand a tax return preparer, the board
30 shall give the person an opportunity for a hearing before the
31 board in accordance with chapter 17A.

32 3. The board, after a hearing and upon a finding that a
33 violation of this chapter or the rules adopted by the board has
34 occurred, may do one or more of the following:

35 a. Issue an order requiring the person to cease and desist

1 from the violation found.

2 *b.* Seek an injunction against the person pursuant to section
3 421D.6.

4 *c.* Deny, suspend, or revoke the registration of the person.

5 *d.* Assess costs incurred by the board against the person.

6 *e.* Assess a civil penalty not to exceed ten thousand dollars
7 against the person for any such violation.

8 Sec. 7. NEW SECTION. **421D.6 Civil action.**

9 1. The board may commence a civil action against a person to
10 do any of the following:

11 *a.* Enjoin a person from violating any provision of this
12 chapter.

13 *b.* Enjoin a person who has violated or is violating any
14 provision of this chapter, or the employer of that person
15 having knowledge of such violations, from further engaging in
16 the preparation of tax returns.

17 2. The Iowa district court shall have jurisdiction over
18 actions brought under this section and may grant appropriate
19 relief.

20 Sec. 8. NEW SECTION. **421D.7 Registration of tax return**
21 **preparers.**

22 1. *a.* On or after January 1, 2019, a tax return preparer
23 shall not, for a fee or other consideration, prepare or assist
24 with the preparation of five or more tax returns for clients
25 during a calendar year, or assume final responsibility for
26 completed work on such tax returns on which preliminary work
27 has been done by another individual, or shall not hold the tax
28 return preparer out as offering such tax return preparation
29 services, unless the tax return preparer meets the requirements
30 of paragraph “*b*” or “*c*”, as applicable, and registers with the
31 board in the manner and form prescribed by the board.

32 *b.* For an individual to be eligible to register as a tax
33 return preparer under this subsection, the applicant shall
34 fulfill all of the following requirements:

35 (1) The applicant shall submit a complete application to the

1 board in the manner and form prescribed by the board.

2 (2) The applicant shall have completed the required number
3 of hours of instruction, as determined by the board, in basic
4 personal income tax law, theory and practice, and ethics from a
5 provider approved by the board.

6 (3) The applicant shall be at least eighteen years of age.

7 (4) The applicant shall be of good moral character as
8 determined by the board.

9 (5) The applicant shall agree in writing to comply with the
10 rules of professional conduct adopted by the board.

11 (6) The applicant shall pay a registration fee, the amount
12 of which shall be determined by the board.

13 (7) The applicant shall pass a tax return preparer
14 examination. The following individuals shall be exempt from
15 the examination requirement in this subparagraph:

16 (a) An individual who is accredited by and in good standing
17 with the accreditation council for accountancy and taxation,
18 inc., as an accredited business accountant/advisor, an
19 accredited tax advisor, or an accredited tax preparer.

20 (b) An individual who is an enrolled agent in good standing
21 with the federal internal revenue service.

22 c. For a corporation, partnership, association, or other
23 entity to be eligible to register as a tax return preparer
24 under this subsection, the applicant shall fulfill all of the
25 following requirements:

26 (1) The applicant shall submit a complete application to the
27 board in the manner and form prescribed by the board.

28 (2) Each principal of the entity shall agree in writing that
29 the principals and the entity will comply with the rules of
30 professional conduct adopted by the board.

31 (3) The applicant shall pay a registration fee, the amount
32 of which shall be determined by the board.

33 2. a. Registration under subsection 1 shall be valid for a
34 period of two years and may be renewed as provided in paragraph
35 "b". Each renewal shall be valid for a period of two years.

1 **b.** For an individual to be eligible to renew registration,
2 the applicant shall successfully complete annual continuing
3 education requirements that are equivalent to the continuing
4 education requirements for registered tax return preparers
5 described in 31 C.F.R. §10.6, and shall pay a renewal fee,
6 the amount of which shall be determined by the board. For a
7 corporation, partnership, association, or other entity to be
8 eligible to renew registration, the applicant shall comply with
9 subsection 1, paragraph "c", subparagraph (1), and shall pay
10 a renewal fee, the amount of which shall be determined by the
11 board.

12 **3.** A person who fails to timely renew registration as
13 determined by the board shall not be allowed reinstatement
14 unless the person pays a reinstatement fee, the amount of which
15 shall be determined by the board.

16 **4.** A person whose registration is on inactive status shall
17 not be allowed reinstatement to active status unless the
18 person pays a reactivation fee, the amount of which shall be
19 determined by the board.

20 **5.** Unless a foreign tax return preparer has a valid
21 registered agent for service of process in this state on file
22 with the secretary of state, that foreign tax return preparer,
23 by acting as a tax return preparer in this state, appoints
24 the secretary of state as the tax return preparer's agent for
25 service of process in any civil action related to the tax
26 return preparer's acting as a tax return preparer in this
27 state. For purposes of this subsection, "*foreign tax return*
28 *preparer*" means a tax return preparer that is a nonresident
29 individual or an entity whose commercial domicile is not in
30 this state.

31 **Sec. 9. NEW SECTION. 421D.8 Responsibilities of tax return**
32 **preparers — prohibitions — violations — criminal penalties.**

33 **1.** A tax return preparer shall have the affirmative
34 responsibility to act in the best interests of the tax
35 return preparer's client and in accordance with the rules of

1 professional conduct adopted by the board under this chapter.

2 2. A tax return preparer shall conspicuously display at the
3 tax return preparer's place of business the documentation of
4 registration under this chapter in accordance with the rules
5 adopted by the board.

6 3. On or after January 1, 2019, it shall be a violation
7 of this section for a tax return preparer to do any of the
8 following:

9 a. Fail to register as a tax return preparer with the board.

10 b. Act as a tax return preparer while the tax return
11 preparer's registration is inactive, revoked, or lapsed.

12 c. Fraudulently or deceptively obtain or attempt to obtain
13 a registration as a tax return preparer.

14 d. Fraudulently or deceptively claim to be a registered tax
15 return preparer.

16 e. Make or authorize the making of any fraudulent, untrue,
17 or misleading statement or representation, oral or written or
18 recorded by any means, that is intended to induce a person to
19 use the tax preparation service of the tax return preparer.

20 f. Obtain the signature of a client on a tax return or
21 authorizing document that has not been fully completed in
22 accordance with the official instructions of the tax return.

23 g. Knowingly give false or misleading information to the
24 board or to a client.

25 h. Violate the rules of professional conduct adopted by the
26 board.

27 i. Fail without reasonable cause to sign a client's tax
28 return if payment for services rendered has been made.

29 j. Fail without reasonable cause to maintain for at least
30 three years copies of all tax returns prepared by the tax
31 return preparer, fail to make such records available to the
32 client during the three-year period, or fail to present a
33 completed tax return to the client not later than the time such
34 tax return is presented for such client's signature.

35 k. Prepare, aid or assist, procure, or advise with respect

1 to an understatement of liability for a client that causes
2 the tax return preparer to be subject to penalties imposed
3 under section 6694 or 6701 of the Internal Revenue Code, or
4 would cause the tax return preparer to be subject to such
5 penalties if those sections applied to the taxes imposed under
6 chapter 422. For purposes of the taxes imposed under chapter
7 422, "*understatement of liability*" means any understatement of
8 the net amount payable with respect to any tax imposed under
9 chapter 422 or any overstatement of the net amount creditable
10 or refundable with respect to any such tax. The determination
11 of whether there is an understatement of liability must be
12 made without regard to any administrative or judicial action
13 involving the tax return preparer.

14 1. Violate section 6695(e), 6695(g), or 6700 of the Internal
15 Revenue Code.

16 m. Fail without reasonable cause to include on each tax
17 return prepared by the tax return preparer an identifying
18 number as may be provided by the board for securing the proper
19 identification of the tax return preparer, the tax return
20 preparer's employer, or both.

21 n. Endorse or otherwise negotiate, directly or through an
22 agent, any check made in respect of the tax that is the subject
23 of a tax return that is issued to a person other than the tax
24 return preparer. This paragraph shall not apply with respect
25 to the deposit by a bank of the full amount of the check in the
26 person's account in such bank for the benefit of the person.

27 o. Violate any other provision of this section or section
28 421D.7, or the rules adopted by the board relating to this
29 subchapter.

30 4. On or after January 1, 2019, a person shall not assume
31 or use the title or designation "tax return preparer", or
32 assume or use any other title, designation, word, letter,
33 abbreviation, sign, card, or device tending to indicate
34 such person is a tax return preparer, unless the person is
35 registered under section 421D.7 or is a person described in

1 section 421D.2, subsection 5, paragraph "b".

2 5. A violation of this section is a simple misdemeanor. In
3 addition to any other applicable penalties, a court may order a
4 person to pay restitution for any damages caused in violating a
5 provision of this section.

6 EXPLANATION

7 The inclusion of this explanation does not constitute agreement with
8 the explanation's substance by the members of the general assembly.

9 This bill creates the tax return preparer oversight Act in
10 new Code chapter 421D and establishes a tax return preparer
11 oversight board (board) to regulate tax return preparers. The
12 bill also makes a corresponding amendment to the powers and
13 duties of the director of revenue.

14 BOARD. The bill includes provisions relating to the
15 creation, composition, and operation of the board and
16 prescribes numerous powers and duties of the board relating
17 to its regulation of tax return preparers, including but not
18 limited to the registration of such persons, creation of forms
19 and exams, adoption of administrative rules, adoption of rules
20 of professional conduct for tax return preparers, employment
21 of personnel, establishment of fees and penalties, and the
22 investigation and enforcement of violations. The board is
23 authorized to establish a fund under its control and to retain
24 all fees, penalties, and fines it imposes and collects.

25 The bill also modifies the powers and duties of the director
26 of revenue to provide that the director shall make state
27 individual income tax returns and related tax information
28 available to the board for purposes of administration and
29 enforcement of new Code chapter 421D, and provides that
30 the sharing of such information is not a violation of the
31 confidentiality provisions of Code sections 422.20 and 422.72.

32 TAX RETURN PREPARERS. On or after January 1, 2019, tax
33 return preparers are required to register with the board and
34 comply with the provisions in the bill. "Tax return preparer"
35 is defined in the bill to generally include individuals

1 who prepare five or more tax returns in a calendar year and
2 corporations or other entities that associate with or employ
3 such individuals. Certified public accountants, attorneys,
4 and certain other fiduciaries and individuals are excluded
5 from the definition. The bill prescribes several requirements
6 that must be met in order to be eligible to register as a
7 tax return preparer, including but not limited to paying a
8 registration fee, being at least 18 years old and of good
9 moral character, agreeing in writing to comply with rules
10 of professional conduct adopted by the board, completing
11 certain tax law training as determined by the board, and
12 passing of an examination approved by the board. Enrolled
13 agents as designated by the internal revenue service (IRS)
14 and certain other accredited tax advisors as described in the
15 bill are exempt from the examination requirement. The bill
16 provides that registration as a tax return preparer is valid
17 for two years, and then must be renewed. In order to renew
18 registration, individual tax return preparers must complete
19 certain continuing education requirements as described in the
20 bill that are similar to continuing education requirements for
21 tax return preparers established by the IRS.

22 The bill provides for the appointment, by operation of law,
23 of the secretary of state as agent for service of process
24 in Iowa for foreign tax return preparers, as defined in the
25 bill, unless those foreign tax return preparers have a valid
26 registered agent on file with the secretary of state.

27 Code section 421D.8 as created in the bill prohibits, on
28 or after January 1, 2019, numerous actions by a tax return
29 preparer, and prohibits persons from assuming the title of
30 "tax return preparer" unless duly registered with the board or
31 exempt from such registration. The bill makes violations of
32 these and other provisions relating to tax return preparers
33 a simple misdemeanor. A simple misdemeanor is punishable by
34 confinement for no more than 30 days or a fine of at least \$65
35 but not more than \$625 or by both. The bill provides that

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1 violations may also subject a person to civil penalties and
2 other costs imposed by the board, and may result in a denial,
3 suspension, or revocation by the board of the tax return
4 preparer's registration. The bill provides administrative
5 procedures that must be followed when such denial, suspension,
6 or revocation occurs and further provides that the board
7 may seek civil injunctions against persons from violating
8 provisions of the bill or from preparing tax returns.